

Before the
FEDERAL COMMUNICATIONS COMMISSION
 Washington, D.C. 20554

In the Matter of)

Communication Assistance for)
 Law Enforcement Act)

CC Docket No. 97-213

To: The Commission

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 FEDERAL COMMUNICATIONS COMMISSION
 OFFICE OF THE SECRETARY

COMMENTS OF 360° COMMUNICATIONS COMPANY

360° Communications Company ("360°")¹, hereby respectfully submits its comments on the Notice of Proposed Rulemaking ("*Notice*") in the above-captioned proceeding.² In the *Notice*, the Commission seeks comment on proposed rules to implement the Communications Assistance for Law Enforcement Act ("CALEA"). Below, 360° will address the Commission's proposed carrier security policies and procedures and the need for the Commission to grant a blanket extension of the compliance date.

I. THE COMMISSION SHOULD MINIMIZE SPECIFIC REQUIREMENTS FOR CARRIERS' INTERNAL INTERCEPTION POLICIES

In reviewing the *Notice*, 360° was surprised at the extensiveness of the proposed rules regarding carriers' internal interception policies and procedures. The *Notice's*

¹ 360° is the country's second largest publicly held cellular company provider. The company offers wireless voice and data services to 2.4 million customers in more than 100 markets throughout 15 states.

² See *Notice of Proposed Rulemaking, Communications Assistance for Law Enforcement Act*, FCC 97-356 (Oct. 10, 1997).

proposals to specify a very detailed and restrictive set of rules to govern carriers' internal practices for assisting law enforcement with authorized interceptions appears a drastic departure from the Commission's recent emphasis on streamlining and deregulation. 360° submits that such detailed requirements are neither necessary nor required by CALEA.

Indeed, Section 301 of CALEA, codified at Section 229 of the Communications Act, directs only that "[t]he Commission shall prescribe such rules *as are necessary* to implement the requirements of the Communications Assistance for Law Enforcement Act."³ While such language does give the Commission discretion to determine what rules "are necessary" to implement CALEA, the Commission interprets this provision overly broadly in concluding that extensive rules *must* be prescribed.⁴ Similarly, the Commission misinterprets the phrase "appropriate authorization" in Section 229(b)(1)(A) by postulating that it refers to internal directives between a carrier's employees (as opposed to a court order or authorization required for a carrier to assist in a lawful interception) and thus requires the agency to regulate such communications.⁵ The likelihood that Congress intended the Commission to regulate the nature and form of communications between employees within a company -- as

³ See 47 U.S.C. § 229(a) (emphasis added).

⁴ For example, the plain language of Congress' directive is in stark contrast to the *Notice's* interpretation that "Section 229 of the Communications Act requires the Commission to prescribe rules to govern the policies telecommunications carriers adopt concerning the conduct of carrier personnel called upon to assist law enforcement officials in implementing electronic surveillance." *Notice* at ¶ 22.

⁵ *Id.* at ¶ 25.

opposed to the interaction between the public, law enforcement and carriers -- appears highly doubtful.

Accordingly, 360° submits that any rules adopted to govern internal carrier practices and procedures for assisting law enforcement with lawful interceptions should be minimal and require carriers only to have procedures in place to ensure that lawful interception requests are appropriately handled. It is simply not necessary for the Commission to specify which employees must interface with law enforcement and/or participate in the lawful interception, whether affidavits should be executed by participating employees and what they should say, the specific nature of the records to be kept and the time within which they must be complied, and the nature and form of internal communications between employees participating in the lawful interception. After all, carriers have long been successfully assisting law enforcement with lawful interception requests without such micromanagement. The capacity and assistance capability requirements imposed by CALEA do not so drastically change the internal interception procedures as suddenly to warrant the imposition of extensive regulatory oversight.

If, however, the Commission determines that certain specific requirements for carriers' internal policies are required, 360° respectfully submits that several of the proposals are impractical, burdensome and unnecessary. In particular, 360° urges the Commission not to require telecommunications carriers to create and maintain an official list of all personnel designated by the carrier to effectuate lawful interceptions, containing information concerning each designated employee's name, date of birth,

social security number, title and contact telephone and pager numbers.⁶ 360° strongly opposes requiring carriers to create and maintain lists of designated employees -- which would include personal and sensitive information about such individuals -- to provide to law enforcement officials. Such a requirement is clearly beyond the scope of CALEA. Moreover, maintaining and updating these lists would be overly burdensome and impractical for a carrier. 360° instead would prefer that the Commission require only that carriers designate a single point of contact at the company for purposes of interfacing with law enforcement officials about CALEA. This would reduce unnecessary paperwork and enable law enforcement to rely upon a single individual within a company to organize completion and delivery of the requested information. It would also afford the carrier flexibility to utilize its employees as appropriate under the particular circumstances.

Further, if the Commission were to require the execution of affidavits in connection with a carrier's assistance in lawful interceptions,⁷ 360° urges the agency to mandate that an affidavit be completed only by the employee or officer responsible for the interception activity, as opposed to every employee who participated. Such an approach would be more administratively practical and less burdensome. Moreover, a single affidavit from the supervising employee should be sufficient to provide the necessary information for recordkeeping purposes. Given the potentially severe penalties associated with unlawful disclosure of intercepted information, additional assurances of confidentiality seem unnecessary.

⁶ *Id.* at ¶ 33.

⁷ As indicated above, 360° believes an affidavit requirement is unnecessary.

II. BOTH LARGE AND SMALL CARRIERS SHOULD BE PERMITTED TO CERTIFY THAT THEY COMPLY WITH THE COMMISSION'S SYSTEMS SECURITY AND INTEGRITY REQUIREMENTS

Sections 229(b)(3) and (c) require that the Commission review carriers' internal policies and procedures to ensure compliance with CALEA and the regulations adopted herein.⁸ Nevertheless, the *Notice* proposes implementing this requirement in a manner that would place greater administrative burdens on large telecommunications carriers than on small carriers. Specifically, it proposes that carriers with an indexed annual revenue threshold of more than \$100,000,000 should be required to make "individual filings . . . that contain detailed statements of the policies, processes, and procedures that each carrier will use to comply with the requirements that are imposed by CALEA . . ."⁹ Carriers with lesser revenue thresholds, by contrast, will be permitted either to file statements describing their security policies, or to certify that they observe procedures consistent with the Commission's rules.¹⁰

360° submits that *both* large and small carriers should be permitted to take advantage of the less burdensome procedures that the Commission has proposed for small carriers. First, less expensive, more administratively simple regulations will reduce carriers' costs, thereby reducing the rates paid by all of the nation's telecommunications customers. Second, such simplified procedures will minimize the Commission's oversight role, thereby conserving FCC resources for other tasks. Third,

⁸ 47 U.S.C. § 229(b)(3), (c).

⁹ *Notice* at ¶ 35.

¹⁰ *Id.*

allowing Commission licensees to certify that they comply with the Commission's rules is a regulatory tool that has been employed successfully in the past. For example, the Commission has utilized a presumption of compliance with its rules in the context of local zoning regulation of satellite earth stations,¹¹ access to telecommunications equipment and services by people with disabilities,¹² and AM broadcast emission limits.¹³

Further, reducing the administrative burden on telecommunications carriers by permitting them to certify their compliance will not make carriers any less likely to conform their security procedures to the Commission's policies. Carriers are responsible corporate citizens who recognize that Americans should not have to tolerate unauthorized electronic eavesdropping, and will do their best to prevent this from occurring. Given the increasingly competitive nature of the telecommunications marketplace and customers' greater demand for secure conversations, carriers will not want to risk their business reputation by compromising customer security. As alluded to in the *Notice*, carriers that violate the Commission's rules regarding systems security

¹¹ See *Preemption of Local Zoning Regulations of Satellite Earth Stations*, 11 FCC Rcd 5809, ¶ 31 (1996) (Report and Order and Notice of Proposed Rulemaking) (rebuttable presumption that state and local regulation of small antennas is unreasonable).

¹² See *Access to Telecommunications Equipment and Services by Persons with Disabilities*, 11 FCC Rcd 8249 (1996) (Report and Order) (rebuttable presumption that, by a date certain, all workplace non-common area telephones would be hearing aid compatible).

¹³ See *Improvement of the Quality of AM Broadcast Service*, 4 FCC Rcd 3835 (1989) (First Report and Order) (AM licensees are presumed to be in compliance with the Commission's emission limits).

and integrity could also be subject to monetary forfeitures or even loss of license.¹⁴

Therefore, the business incentives *to* comply with the Commission's rules, combined with the regulatory incentives *not to* violate these rules, will ensure carrier compliance.

Finally, 360° requests that the Commission afford more time for carriers to meet any reporting or certification requirements regarding their internal interception policies. Particularly if the Commission adopts extensive requirements for these policies or the descriptive submission, the 90 days proposed¹⁵ is simply not sufficient for carriers to digest the new rules, develop and implement policies and procedures on a company-wide basis, and prepare the necessary descriptive or certifying submission to the Commission. 360° submits that 180 days would be a more appropriate time period.

III. THE COMMISSION SHOULD EXTEND THE DATE FOR COMPLIANCE WITH CALEA'S TECHNICAL AND CAPACITY REQUIREMENTS

CALEA specifically permits carriers to petition the Commission for an extension of time to comply with the assistance capability requirements of Section 103.¹⁶ Indicating its uncertainty as to whether such requests will be forthcoming, the Commission in the *Notice* declines to promulgate specific rules to govern these extension requests.¹⁷ However, 360° fully expects that the majority of carriers -- if not all -- will find themselves compelled to file such extension petitions since, at this late

¹⁴ *Notice* at ¶ 37.

¹⁵ *Id.*

¹⁶ 47 U.S.C. § 1006(c).

¹⁷ *Notice* at ¶ 50.

date, interim technical standards have only recently been agreed upon.¹⁸ Thus, CALEA-compliant equipment will not be available for quite some time.

Accordingly, 360° strongly urges the Commission to grant a blanket extension of the compliance date for all carriers, rather than requiring each carrier to file a separate petition. Such a blanket extension is plainly warranted under the circumstances and would clearly serve the public interest. Requiring the submission of numerous duplicative petitions serves no purpose except to impose an undue burden on carriers, while also unnecessarily adding to the Commission's already ample workload.

IV. CONCLUSION

For the foregoing reasons, 360° urges the Commission to minimize specific requirements for carrier's internal interception policies, to permit all carriers to certify

¹⁸ TIA JStd025 is an interim standard for equipment. It is currently under review by ANSI. Due to the lack of defined standards, carriers have been unable to provide the necessary requirements to their manufacturers to begin the design and manufacture of equipment.

compliance with the Commission's system security and integrity requirements, and to extend the time for compliance with CALEA's technical requirements.

Respectfully submitted,

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